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RAND INTERNATIONAL, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

RAND INTERNATIONAL, INC.,

Plaintiff,

v.

LUCASFILM LTD.,

Defendant.

CASE NO. CV-08-3897-JSW

**PLAINTIFF'S RESPONSE TO  
DEFENDANT'S OBJECTION TO  
DECLARATION OF MARK WORKSMAN**

Date: August 22, 2008  
Time: 9:00 a.m.  
Courtroom: 2  
Judge: Hon. Jeffrey S. White

**INTRODUCTION**

Defendant, LucasFilm Ltd. ("Defendant" or "LucasFilm"), as part of its opposition to the Plaintiff's, Rand International, Inc. ("Rand International"), motion for injunctive relief, objects to and requests that this Court disregard the Mark Worksmen's Declaration in Support of Plaintiff's Ex Parte Motion for Injunctive Relief (the "Worksmen Declaration"). In its objections, Defendant argues that this Court should disregard the Worksmen Declaration because Defendant

claims the declaration contains hearsay, conclusory statements and other statements that do not conform to the rules of evidence. In essence, the Defendant asks this Court, without citing any case law for support, to apply a heightened standard under Federal Rule of Civil Procedure 56 to the Workman Declaration. However, as discussed below, this heightened summary judgment standard is inappropriate in a declaration made in support of a motion for injunctive relief.

Accordingly, Rand International respectfully requests that the Court dismiss the Defendant's objections to the Workman Declaration.

### **ARGUMENT**

#### **I. WORKSMAN'S DECLARATION IS APPROPRIATE FOR INJUNCTIVE RELIEF**

##### **A. Evidentiary Requirements For a Declaration in Support of Injunctive Relief Are Less Stringent Than For Summary Judgment**

Defendant claims Workman's Declaration fails to meet the requirements under Federal Rule of Civil Procedure 56(e). Defendant, however, fails to cite any authority which supports its contention that Rule 56(e) should apply. In fact, there is no such case law -- it is well settled that the requirements of Rule 56(e) are inapplicable to declarations made in support of a motion for injunctive relief. Westpac Audiotext Inc. v. Wilks, 756 F.Supp. 1267, 1268 (N.D. Cal. 1991), *vacated by stipulation*, 804 F.Supp. 1225 (N.D. Cal. 1992)("[E]videntiary requirements for preliminary injunctions are less stringent than those in motions for summary judgment."). Indeed, Courts have specifically rejected attempts, like Defendant's, to apply a higher standard. Cobell v. Norton, 391 F.3d 251, 260-61 (D.C. Cir. 2004); Sierra Club, Lone Star Chapter v. FDIC, 992 F.2d 545, 551 (5th Cir. 1993); 12 Moore's Federal Practice § 65.23 (2004). Instead, Courts apply a less stringent standard for declarations made in support of motions for injunctive relief because injunctive relief is not a final judgment on the merits and is left to the discretion of the Court, thus application of a summary judgment standard is considered inappropriate. Westpac, 756 F.Supp. at 1268; Cobell, 391 F.3d at 260-61. Moreover, because of the immediate nature of injunctive relief, Court's will consider inadmissible evidence when reviewing whether the movant will suffer irreparable harm. Flynt Dist. Co. v. Harvey, 734 F.2d 1389, 1394 (9th Cir. 1984).

Here, Defendant argues that this Court should apply the more stringent Rule 56(e) standard to the Workman Declaration solely because “there are no exigent circumstances that justifies Rand’s near total reliance on unreliable evidence.” (Def. Memo at 3 – 4.) This argument is misplaced as there is no requirement that Plaintiff must demonstrate exigent circumstances. Defendant further argues that it terminated the License Agreement on June 18, 2008, therefore Rand had plenty of time to obtain any reliable evidence that it may have needed to comply “fully with the requirements of Rule 56(e).” (Def. Memo at 3 – 4.) However, upon learning of LucasFilm’s termination, Rand International, rather than commencing a lawsuit, began the process of testing its products which had purportedly failed the Toys-R-Us/Bureau Veritas tests. (Workman Decl. at ¶ 85.) Rand International has spent the last two months actually seeking to resolve the dispute without litigation. In such, Defendant is wrong that Rule 56(e) would apply to declarations made in support of motions for injunctive relief.

**B. Courts May Consider Declarations That Contain Inadmissible Evidence, Including Hearsay Evidence**

Defendant also objects to the Workman Declaration, claiming it contains “conjecture, speculation and hearsay.” (Def. Memo at 2.) This objection is also unavailing. Courts have routinely permitted hearsay, as well as other evidence that may be considered inadmissible, to support a request for a preliminary injunction. Cobell, 391 F.3d at 260-61; Sierra Club, 992 F.2d at 551 (district court may rely on otherwise inadmissible evidence in preliminary injunction stage). Indeed, the Ninth Circuit, in K-2 Ski Company v. Head Ski Co., Inc., 467 F.2d 1087 (9th Cir. 1972), a case relied on by the Defendant, held that the Court may consider an affidavit of general statements as long as the movant makes a “showing sufficient to demonstrate that he will probably succeed on the merits.” K-2 Ski Company, 467 F.2d at 1089. As demonstrated in Rand International’s moving and reply submission, Rand International meets this standard.

**II. THE MAJORITY OF THE DECLARATION IS NOT CONTESTED;  
DISREGARDING THE WORKSMAN DECLARATION  
IN ITS ENTIRETY WOULD BE UNFAIR TO RAND INTERNATIONAL**

Defendant only points to nineteen (19) paragraphs, out of a one hundred and five (105) paragraph declaration, that allegedly contain statements that are conclusory, speculative or otherwise inadmissible. According to Defendant, this Court should disregard the entire Workman Declaration. Defendant does not cite to any authority for the Court to take such a drastic measure and ignores that such an action would be unfair and highly prejudicial. In fact, the majority of the Workman Declaration contains his personal knowledge as a senior officer of Rand International, his knowledge of the relevant dealings with which he was intimately involved and correspondence which he either was part of or saw. There is, accordingly, no good reason to disregard the entire Declaration. This is particularly so given that, as discussed above, Court's routinely allow such statements in declarations submitted in support of injunctive relief.

**CONCLUSION**

For the foregoing reasons, Rand International respectfully requests that the Court dismiss Defendant's objections to the Declaration of Mark Workman.

Dated: August 20, 2008

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By: \_\_\_\_\_/s/  
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